



TEXAS ALCOHOLIC BEVERAGE COMMISSION

Post Office Box 13127, Austin, Texas 78711-3127 (512) 458-2500 Jeannene Fox, Acting Administrator

RQ-651

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December 6, 1993

General Dan Morales
Office of Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711

MBT
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Dear General Morales:

The Texas Alcoholic Beverage Commission respectfully requests the opinion of your office on the following two questions:

Question One

Amendments to §106.02, 106.04 and 106.05 of the Texas Alcoholic Beverage Code, V.T.C.A., by 73rd legislature, effective September 1, 1993, provide for enhanced penalties from \$500 - \$1,000 for subsequent violations of the above listed code sections. The increase in penalty raises the following question.

In which court is jurisdiction proper for subsequent violations of §106.02, 106.04, 106.05 (purchase, consumption and possession of alcohol by a minor) if the enhanced penalty range is between \$500 - \$1000?

The Texas Constitution, Article V §19, grants justice courts original criminal jurisdiction over all misdemeanor offenses, punishable by fine only. Article 4.11, Texas Code of Criminal Procedure V.T.C.A., purports to limit the justice courts jurisdiction to cases in which the fine does not exceed \$500. We ask, therefore, for your opinion as to whether the law vests justice, county or both courts with jurisdiction in these matters. We attach the brief of the Honorable Ken Oden, Travis County Attorney on this exact question. This question is not now the subject of litigation and is a question of pure law.

Question Two

Amendments to §106.115 Texas Alcoholic Beverage Code, V.T.C.A., by the 73rd Legislature, effective September 1, 1993, include the right of the court to impose an alcohol awareness course in addition to a fine for cases arising under §106.02, 106.04 and 106.05 Alcoholic Beverage Code of Texas, V.T.C.A., which gives rise to the second question:

Is the imposition of an alcohol awareness course by a justice of the peace court under §106.115 a "punishment" that would deprive the court of jurisdiction by exceeding the constitutional limitation "punishable by fine only, or a rehabilitative measure that does not impose an additional penalty and therefore does not divest the justice of the peace court of its constitutional jurisdiction?

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This question is not now the subject of litigation and poses a mixed question of law and fact. I attach and adopt by reference, with his permission, the able brief of McClennan County District Attorney; John W. Segrest, on this subject.

Sincerely,


Jeannene Fox
Acting Administrator

JF:mw